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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,265	08/20/2003	Andreina P. Gomez	ACS 65048	7344
24201	7590	11/01/2004	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045			SWEET, THOMAS	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 11/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/645,265

Applicant(s)

GOMEZ ET AL.

Examiner

Thomas J Sweet

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 8/16/2004 have been fully considered but they are not persuasive. In the broadest reasonable interpretation of the term "transverse" based on multiple dictionary definitions, the Examiner construes the term to mean across rather than perpendicular as it appears the applicant intends. However, even if the term "transverse" was limited to perpendicular there is no structural portion of the curved portion defined in the claim to establish perpendicular to the longitudinal axis. For example in the application and the Herklotz et al reference, a tangent to the apex of the curve is roughly parallel to the longitudinal axis, but in the Herklotz et al reference an axis through both apexes of the curve portion is roughly perpendicular to the longitudinal axis. Alternatively, the applicant appears to be defining transverse as perpendicular to the longitudinal axis with respect to straight portions 58 of the curve portion but has not claimed this structurally. With respect to extending towards the second peak, the Herklotz et al reference has two loops on the curved portion of each link both of which extend in the general direction of a second link/peak and therefore meet that limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey et al (US 5992000) in view of Herklotz et al (US 6264688). Humphrey et al discloses a method of crimping a stent on a catheter (fig. 4 and Col 6 last paragraph) providing a catheter (120) having an expandable member (142); providing a stent (140) mounting the stent over the expandable member (Col 6, lines 55-57), and compressing the stent into contact with the expandable member so that as the stent is compressed to the first delivery diameter (Col 6, lines 60-63). However, Humphrey et al remains silent as to the specific strut pattern of the stent and how it aligns when crimped. Herklotz et al teaches another stent (fig.1) for intravascular support comprising a plurality of cylindrical rings (between rings 4 and 5) aligned along a common longitudinal axis and interconnected (by 10 and 11) to form the stent, each cylindrical ring having a first delivery diameter and a second implanted diameter; each cylindrical ring having a plurality of first peaks (end of 8) and second peaks (end of 6 or 7), each of the peaks having a height, the second peaks being shorter than the first peaks; at least one undulating link (11) attaching each cylindrical ring to an adjacent cylindrical ring, the undulating links having a curved portion extending transverse to the stent longitudinal axis toward the second peak (each curve at 11 is toward a shorter peak); each undulating link having a first arm and a second arm (the ends of 11), the first arm and the second arm being straight and parallel to the longitudinal axis of the stent and being circumferentially offset from the second peak. Additionally, Herklotz et al teaches the curved portion (at 11) of the undulating link (11) is longitudinally aligned with the second peak when compressed to the first delivery diameter (as in fig.1). It would have been obvious to one of ordinary skill in the art to use a stent such as taught by Herklotz et al when

applying the method of Humphrey et al since it amounts to mere substitution of one functionally equivalent stent for another in the same field of endeavor.

With regard to claim 28, in the compressed state, as can be see in figure 1, the curved portion of the undulating link is transverse to the second peak.

With regard to claim 29, no view of the stent prior to compressing the stent into contact with the expandable member is shown but, it is inherent that in the expanded state the stent of figure 1 would have the curved portion of the undulating link longitudinally offset relative to the second peak and transverse to the second peak.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J Sweet whose telephone number is 571-272-4761. The examiner can normally be reached on 6:30 am - 5:00pm, M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tjs

  
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